

BINGHAM McCUTCHEN

July 12, 2004

BY HAND

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Re: *Andrus et al. v. Indevus Pharmaceuticals, Inc., et al,*
No. 1:04-cv-10911-GAO and other diet drug cases

Dear Judge O'Toole:

We represent defendant Wyeth in the 193 diet drug cases recently removed to this Court and write to respectfully suggest several agenda items for the status conference on July 13, 2004.

Wyeth's motion for a stay. Wyeth has moved to stay all 193 diet drug cases pending transfer to the diet drug MDL Court so that the MDL Court can decide the remand motions (thus far remand motions have been filed in 133 cases and motions are anticipated in all cases). The MDL Court has already decided numerous similar motions. A decision to stay the cases would moot the need to brief and argue the motions for remand in this Court. Wyeth will be prepared to address the merits of the stay motion at the conference if the Court decides to hear the issue at that time.

Plaintiffs' motions to remand. In the event the Court wishes the parties to brief the remand motions, Wyeth respectfully suggests that the Court set a schedule for consolidated briefing and argument. All, or substantially all, of the cases present the issue of whether defendant Indevus Pharmaceuticals, Inc. ("Indevus") has been fraudulently joined. Certain other cases also present the issues whether Boehringer Ingelheim Pharmaceuticals, Inc. has been fraudulently joined, whether Wyeth sales representatives have been fraudulently joined, and whether plaintiffs can defeat jurisdiction as to an entire action by misjoining the claims of one plaintiff who is non-diverse from a defendant with the claims of numerous other plaintiffs who are diverse from defendants. Consolidated briefing and argument will eliminate repetition and facilitate orderly resolution of the issues.

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Fraudulent joinder of sales representatives. Three cases filed by Thornton & Naumes LLP name as defendants 115 Wyeth and Indevus sales representatives. These sales representatives live in 22 different states, and only one defendant out of the 115 is alleged to be a Massachusetts resident. Wyeth believes that these sales representative defendants are fraudulently joined, among other things, because they have no contacts with Massachusetts and are not amenable to service in this state. Wyeth therefore intends to request this Court to order plaintiffs' counsel to disclose to Wyeth, prior to Wyeth's briefing these issues, plaintiffs' counsel's basis for believing that each sales representative is amenable to suit in Massachusetts. That basic information should be readily available to counsel who filed these claims. That information will permit Wyeth and the Court to focus attention on the presumably few, if any, such defendants as to which plaintiffs' claims are not wholly frivolous.

Other sales representative issues. Counsel for Wyeth intends to represent its current and former employees and will request additional time to contact these defendants to obtain retainer agreements and to file responsive pleadings.

Thank you for your consideration of these matters.

Respectfully,



Janice W. Howe

cc: Counsel of Record (Via Facsimile)

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